

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (JKF)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF BUCHANAN INGERSOLL & ROONEY PC
FOR THE THIRTIETH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Quarterly Fee Application of Buchanan Ingersoll & Rooney PC for the Thirtieth Interim Period (the “Application”).

BACKGROUND

1. Buchanan Ingersoll & Rooney PC (“Buchanan”) was retained as co-counsel to the Official Committee of Equity Holders. In the Application, Buchanan seeks approval of fees totaling \$61,097.00 and expenses totaling \$1,013.73 for its services from July 1, 2008 through September 30, 2008 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2008, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330,

Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Buchanan, and received a response from Buchanan, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted that during the current Application Period, Buchanan billed 23.20 hours, for total fees of \$5,998.00, on matters pertaining to its fee application preparation. In our final report for the previous interim period, we addressed Buchanan's cumulative charges for fee application preparation over the course of the case and recommended a fee reduction on this issue.¹ The fees billed for fee application preparation during the current Application Period comprise approximately 9.8% of the total fees sought by Buchanan during the current Application Period. Although the Court has not set a defined limit on fees for fee application preparation in this case, such fees must still be reasonable under Section 330 of the Bankruptcy Code. A number of courts, including this one, have established 5% of the total fees billed as a guideline for reasonableness of such fees. Thus, we asked Buchanan to explain why the amount of its fee application preparation fees should be considered reasonable, and to explain any special factors meriting consideration on this issue. Buchanan responded as follows:

As a result of your concerns about the time BIR spent on fee application preparation as a percentage of total fees during the 29th interim period, you recommended reducing our fees by \$1,215.68, which we agreed to. I further offered not to bill any more of my time for preparing, reviewing or filing our fee applications, to instead bill only paralegal time henceforth. I believe you thanked me for that suggested

¹*See Fee Auditor's Final Report Regarding Fee Application of Buchanan Ingersoll & Rooney P.C. for the Twenty-Ninth Interim Period*, at ¶ 3.

procedure going forward.

Unfortunately, the underlying monthly fee applications that make up our 30th Quarterly Fee Application had already been filed when we reached our agreement on the 29th [interim period], and they contained 5.7 hours of my time for fee application preparation, at a value of \$2,935.50 total. I will be happy to reduce my fees by the same amount as last time, \$1,215.68, or whatever portion of the \$2,935.50 you deem reasonable, and I reiterate that I will not bill my time for fee application preparation and review in the future, only paralegal time.

We appreciate Buchanan's response, and note that in the prior interim period, we recommended a reduction of one-half the amount by which Buchanan's fees for fee application preparation had exceeded 5% of its total fees. We based this recommendation on the following factors: (a) the relatively small size of Buchanan's fee applications (causing its fee application preparation fees to comprise a larger than normal percentage of the total), (b) the fact that the majority of the work on fee application preparation was performed by a paralegal with a lower hourly rate, and (c) the absence of any set limit in the fee auditor order in this case for fees billed on fee application preparation. Applying these same factors, it appears to us that a reduction of one-half the amount by which Buchanan's fee application preparation fees exceed 5% of its total fees would again be appropriate. The total fees requested by Buchanan in the current Application are relatively small when compared to many of the other applicants. And roughly 75% of the time billed on fee application preparation was billed by a paralegal with an hourly rate of \$175.00. Five percent of Buchanan's total fees for the current Application Period would be \$3,054.85. Buchanan's fees for fee application preparation exceeded this amount by \$2,943.15, one-half of which is \$1,471.57. Thus, we recommend a reduction of \$1,471.57 in fees.

CONCLUSION

4. Thus, we recommend approval of \$59,625.43 in fees (\$61,097.00 minus \$1,471.57)

and \$1,013.73 in expenses for Buchanan's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By:



Warren H. Smith
Texas State Bar No. 18757050

Republic Center
325 N. St. Paul, Suite 1250
Dallas, Texas 75201
214-698-3868
214-722-0081 (fax)
whsmith@whsmithlaw.com

FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 6th day of February, 2009.



Warren H. Smith

SERVICE LIST
Notice Parties

The Applicant

Teresa K. D. Currier
Buchanan Ingersoll & Rooney PC
1000 West Street, Suite 1410
Wilmington, DE 19801

The Debtors

David B. Siegel, Esq.
Sr. V.P. and Gen. Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

Counsel for the Debtors

James H.M. Sprayregen, Esq.
David M. Bernick, P.C.
Deanna Boll
Kirkland & Ellis
200 East Randolph Drive
Chicago, IL 60601

Laura Davis Jones, Esq.
James R. O'Neill
Pachulski, Stang, Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

Counsel for the Official Committee of Unsecured Creditors

Lewis Kruger, Esq.
Stroock & Stroock & Lavan
180 Maiden Lane
New York, NY 10038-4982

Michael R. Lastowski, Esq.
Duane Morris & Heckscher
1100 N. Market Street, Suite 1200
Wilmington, De 19801-1246

Counsel to the Official Committee of Property

Damage Claimants

Scott L. Baena, Esq
Bilzin, Sumberg, Dunn, Baena, Price & Axelrod
First Union Financial Center
200 South Biscayne Boulevard, Suite 2500
Miami, FL 33131

Michael B. Joseph, Esq.
Ferry & Joseph, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899

Counsel to the Official Committee of Personal Injury Claimants

Elihu Inselbuch, Esq.
Caplin & Drysdale
375 Park Avenue, 35th Floor
New York, NY 10152-3500

Marla R. Eskin
Campbell & Levine, LLC
Suite 300
800 N. King Street
Wilmington, DE 19801

Official Committee of Equity Holders

Gary M. Becker
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 10036

United States Trustee

David Klauder
Office of the United States Trustee
844 King Street, Suite 2311
Wilmington, DE 19801